IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 6625 of 2004

1. Manku Malu Kamble,
Deceased Heirs:
A) Masanabai Balu Kamble
and others ..Petitioners

vs.

1. The State of Maharashtra
and others ..Respondents

Shri A.Y.Sakhare, Sr.Advocate with Smt.Varsha Palav and Shri Sarang Aradhye and Smt.Monica Khade for petitioners.
Shri V.P.Malvankar, A.G.P. for respondents.

CORAM: A.P.SHAH &
S.C.DHARMADHIKARI JJ.
5th October, 2004

P.C.

Heard Advocates.

2. By this petition, the petitioners are seeking a direction to the respondents to grant application made by the petitioners for cutting trees in Survey No.74 (Gat No.245/10) situated at Mouje Gavase, Taluka Chandgad, District Kolhapur. It is the case of the petitioners that Survey No.74 (Gat Nio.245/10) admeasuring 17 H and 29 R was originally Hare Saranjam Vatan which was abolished in 1952. The Petitioners claim that they are in physical possession of the said land. The

petitioners had filed a civil suit for injunction as well as declaration that the petitioners are tenants and entitled to purchase the land as owners by depositing the occupancy price as per the Government Schedule. The Trial Court rejected the petitioners' case that the petitioners were the tenants in the said land but directed that the petitioners should not be evicted without following due process of law. The decision of the Trial Court was set aside by the District Court in appeal and the suit was dismissed. Being aggrieved the petitioners prefertred a second appeal which was allowed by Chitre J. and the decree passed by the Trial Court was restored. The petitioners are contending that in order to make the land cultivable they want to cut the trees standing on the land and, therefore, application was made to the Range Forest Officer, Ajara, District Kolhapur who failed to pass any order on the application and, therefore, the petitioners have approached this Court seeking a direction to the Range Forest Officer to permit the petitioners to cut the trees in the land Survey No.245/10.

3. The petition is opposed by respondents. On behalf of respondent no.2, Range Forest Officer, Ajara has filed a counter affidavit. The

respondents have pointed out that the land in question is a reserved forest and is in possession of Forest Department since 1891. The Forest Department has planted 50,000 plants on the land in the year 1995-96 under "Afforestation for soil conservation scheme" and incurred expenditure of Rs.3.91 lacs. The petitioners were never in physical possession of the land and they are taking advantage of the erroneous entries made in 7/12 extract made by the revenue authorities. The land in question was declared as "Reserved Forest" as far back as on 4th July, 1891. The relevant extract of the Gazette dated 11th July, 1981 on translation reads as follows:

Karveer Government Gazette, 11th July, 1891

Declaration

From Sarsubhe, Presidency Karveer.

. Is published to inform all the people that on receipt of resolution No.210 dated 19th April 1887 of Hon'ble Council of Administration House, (passed) on the basis of rules framed for Forest Management for Karveer Presidency, from the Hon'ble Khan Bahadoor Diwean Saheb, Government Karveer, following particulars are given under the Rules existing at the time of Forest Settlement

resolution. Accordingly, from the date of this declaration, the Government reserved and protected lands are entered towards forest and the land from out of the lands taken earlier from forest department, which appeared to be of no use towards forest at the time of settlement, is excluded from forest. In this regard, the declaration published earlier on date 21 May 1883 by the Forest Department, has been cancelled.

Name of 'Peta'	Name of village	Land confirmed towards forest				Land excluded from Forest			
		In Reserved Forest		In protected Forest		From out of reserved forest		From out of protected forest	
		Survey No.	Acre Gunthe	Survey No.	Acre Gunthe	Survey No.	Acre Gunthe	Survey No.	Acre Gunthe
Taluka Gavase		68	28-2	65	457-25	--	--	--	--
Ajare Chandgad		69	30-15						
Sansthan		70	38-13						
Ichal-aranji		71	39-39						
		72	34-10						
		73	25-36						
		74	42-29						
		7	239-245	2	457-25				

Sd/- R.K.WAIDYA
Sarsubhe

"Peta"
(i.e.A Division of country consisting of number of small Towns & villages, Sub-Division of "Pargana" or Taluka

4. By notification issued under sec.4 of the Indian Forest Act, 1957 published in Bombay Govt.Gazette notification No.FLD/1153/57127/Vi-J dated 12th November, 1953 the land Survey No.74 has been declared as a reserved forest. Our attention was also drawn to the relevant correspondence between the Chief Conservator of Forest and Collector of Kolhapur which clearly show that the Survey No.747 was not included in Hare Saranjam Land belonging to late Jahagirdar Shri Narayanarao Babasaheb Ghorpade which came to be abolished under the Abolition of Bombay Saranjam Jahagirs and other Inams of Political Nature Resumption Rules, 1952. It appears that Survey No.74 through inadvertence was included in the revenue lands covered by Here Saranjam Vatan by the Revenue Authorities.

5. In T.N.Godavaraman Thirumukpad Vs. Union of India and others (Writ Petition (Civil) No.202 of 1995, the Supreme Court has held that Forest Conservation Act, 1986 was enacted with a view to check further deforestration which ultimately results in ecological imbalance, and therefore, the provisions made therein for the conservation of forests and for matters connected therewith must apply to all forests irrespective of the nature of ownership or classification thereof. It was held

that word "Forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forest, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The terms "forest land" occurring in Section 2 will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Governement record irrespective of the ownership. The Court directed that the felling of trees in all forests is to remain suspended except in accordance with the Working Plans of the State Governments, as approved by the Central Government. In the absence of any Working Plan in any particular State, such as Arunachal Pradesh, where the permit system exist, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation. The Supreme Court has imposed complete ban on the movement of cutting of trees and timber.

6. The learned Counsel for the petitioners is unable to show any right or title of the petitioners in respect of Survey No.74 exceptl saying that the petitioners are in physical possession of the said land. In fact, in

petitioners' suit the Trial Court has recorded a categorical finding that the petitioners are encroachers on the forest land. In the circumstances, the petitioners' prayer for permission for cutting trees from the forest land cannot be granted.

7. Petition is dismissed.